

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES FOR THE USE
AND BENEFIT OF INTERSTATE
HEATING, INC.,

Plaintiff(s),

v.

Case No.
24-CV-6342-EAW-MJP

FRANKENMUTH MUTUAL
INSURANCE COMPANY,

Defendant(s).

ORDER FOR PROPOSED JOINT DISCOVERY PLAN

This matter has been referred to me for pretrial matters. I have scheduled a Rule 16 conference in the above-referenced case for **September 17, 2024 at 9:00 a.m.** The parties may appear in-person or by phone. If a party intends to appear by phone, notify me by emailing pedersen@nywd.uscourts.gov.

Instructions for parties appearing by phone. When counsel plans to appear by phone, call 877-402-9753 and enter access code 7137484 shortly before the scheduled date and time. All parties are expected to have a clear audio connection. I have found that when parties use a speakerphone this affects the quality of the sound on my conference system. Therefore, counsel should not use a speakerphone for conferences with me.

Proposed Discovery Plan. In preparation for the Rule 16 conference, the parties are **ORDERED** to prepare a Joint Proposed Discovery Plan (“PDP”). The

parties shall docket their PDP **no later than** four business days before the conference. If the parties need an adjournment, they must contact my staff and me at pedersen@nywd.uscourts.gov **and** docket a letter motion request for the same **no later than the deadline for the PDP**.

WARNING. Failure to docket the PDP or request an adjournment before this deadline may result in sanctions under Rule 16(f) and may result in the Court imposing its own deadlines. Failure to follow this order may likewise result in sanctions under Rule 16(f) and may result in the Court imposing its own deadlines or terms for the scheduling order.

Disagreements about deadlines. If the parties cannot agree on dates for the PDP, the parties must submit a single PDP stating each party's preferred deadlines.

After the Rule 16 conference, I will issue a scheduling order, which will govern all pretrial proceedings in this action. Attached to this order, the parties will find the required items for their PDP. These numbered items state additional requirements that are part of this order. The parties' PDP must include these items in corresponding numbered paragraphs.

IT IS SO ORDERED.

Dated: August 20, 2024
Rochester, NY

/s/ Mark W. Pedersen
MARK W. PEDERSEN
United States Magistrate Judge

Pre-Discovery

1. **Counsel.** The names of the attorneys or parties who will appear at the Rule 16 conference and their contact information. If counsel appearing at the Rule 16 conference is not yet admitted in the Western District, they shall include in the PDP a deadline of 10 business days from the date of the Rule 16 conference for submission of a *pro hac* or permanent admission application.

2. **Rule 26 meeting.** The date on which the meet and confer required by Rule 26(f) was held, along with the names of the attorneys or parties who participated in that meeting.

3. **Summary of claims.** A summary of the claims involved in the case.

4. **Summary of discovery exchanged.** A summary of all discovery exchanged before the Rule 16 conference.

5. **ESI discussions.** Whether the attorneys or parties have discussed if any ESI will be produced and if the parties have entered into an ESI protocol.

6. **Protective orders.** Whether the attorneys or parties have discussed the necessity of a protective order, and if so, the parties' expected date of submission of a draft protective order to the Court for approval.

7. **Magistrate Judge jurisdiction.** Whether the parties consent to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). A form for consenting to magistrate judge jurisdiction is attached.

Phase 1 Discovery

8. **Initial disclosures.** The date for completion of initial disclosures required under Fed. R. Civ. P. 26(a)(1)(A), if not yet made. Alternatively, either party may state whether an exemption applies under Fed. R. Civ. P. 26(a)(1)(B).

9. **Mediation.** The parties should note that the Court requires mediation pursuant to its Alternative Dispute Resolution Plan, which is available on the Court's public website. Unless the case is exempt under the District's ADR Plan, the parties must submit proposed mediation dates as discussed herein. And they must comply with sub-paragraphs (a) through (d) below.

- a. The parties shall provide the date for completion of preliminary discovery necessary for a settlement conference or mediation.
- b. The parties shall also provide their proposed dates for: selection of a mediator; initial mediation session.
- c. Once the parties select a mediator, they must sign and file on the docket the Court's form stipulation selection of mediator, available here:

https://www.nywd.uscourts.gov/sites/nywd/files/stip_selection_of_mediator_0.pdf.
- d. Any motion to opt out of mediation is due no later than 14 business days following the Rule 16 conference scheduled in this matter.

10. **Limitations on discovery.** Any changes in the limitations on discovery as provided in Fed. R. Civ. P. 30 (depositions), Fed. R. Civ. P. 33 (interrogatories), and Fed. R. Civ. P. 34 (document requests).

Phase 2 Discovery

11. **Motions to amend or join parties.** The date for filing any motions to amend or join parties, to be made returnable before me, unless directed otherwise by the assigned District Judge. **Any motion to amend the pleadings to add claims or join additional parties filed after the court-approved deadline will be denied absent a showing of good cause under Fed. R. Civ. P. 16(b)(4).** *See Sacerdote v. New York University*, 9 F.4th 95, 115 (2d. Cir. 2021).

12. **Close of fact discovery.** The parties shall provide the date for completion of all fact discovery.

13. **Motions to compel.** The parties shall provide a date by which they will file motions to compel.

14. **Experts.** The parties shall state if they anticipate retaining expert witnesses in this case. The parties shall provide date(s) for the exchange of expert reports and for the close of all expert discovery.

15. **Dispositive motions.** The parties shall supply a date by which they will file dispositive motions. If no dispositive motions are filed by that date, I will consider the case ready for trial and refer it back to the District Judge for scheduling.

16. **Trial.** The parties shall advise if a jury trial is requested and the estimated length of the same.

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NOTICE, CONSENT, AND ORDER OF REFERENCE -
EXERCISE OF JURISDICTION BY A UNITED STATES
MAGISTRATE JUDGE

24-CV-6342-EAW-MJP

NOTICE OF AVAILABILITY OF A UNITED STATES MAGISTRATE JUDGE TO EXERCISE JURISDICTION

In accordance with the provisions of 28 U.S.C. §636(c), and Fed.R.Civ.P. 73, you are notified that a United States magistrate judge of this district court is available to conduct any or all proceedings in this case including a jury or nonjury trial, and to order the entry of a final judgment. Exercise of this jurisdiction by a magistrate judge is, however, permitted only if all parties voluntarily consent.

You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's jurisdiction from being exercised by a magistrate judge. If any party withholds consent, the identity of the parties consenting or withholding consent will not be communicated to any magistrate judge or to the district judge to whom the case has been assigned.

An appeal from a judgment entered by a magistrate judge shall be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court.

CONSENT TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. §636(c) and Fed.R.Civ.P. 73, the parties in this case consent to have a United States magistrate judge conduct any and all proceedings in the case, including the trial, order the entry of a final judgment, and conduct all post-judgment proceedings.

Party Represented

Signatures

Date

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

ORDER OF REFERENCE

IT IS ORDERED that this case be referred to Mark W. Pedersen, United States Magistrate Judge, to conduct all proceedings and order the entry of Judgment in accordance with 28 U.S.C. §636(c) and Fed.R.Civ.P. 73.

Date

United States District Judge

NOTE: RETURN THIS FORM TO THE CLERK OF THE COURT ONLY IF ALL PARTIES HAVE CONSENTED ON THIS FORM TO THE EXERCISE OF JURISDICTION BY A UNITED STATES MAGISTRATE JUDGE.